THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No. 2357 of 2002

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Dated 28.01.2006

Between:

Member Secretary of A.P.State Electricity Board

(Now known as AP TRANSCO LTD)

Vidyut Soudha, Somajiguda, Hyderabad & others.

..... PETITIONER

AND

Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and another.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No. 2357 of 2002

O R D E R:

In the present writ petition, A.P. TRANSCO, erstwhile A.P. State Electricity Board, challenges the validity of the award of the Additional Industrial Tribunal, in I.D.No.114 of 2000, dated 09.04.2001.

Facts, to the extent necessary, are that on the basis of certain irregularities regarding recruitment to the post of Helper from among the ex-casual labour of Nalgonda District, a vigilance enquiry was conducted and on a report being submitted that

certain casual labourers, including the second respondent, had secured the post of Helper in a dubious manner, through impersonation, and that the Divisional Manager, Nalgonda was also involved, the Member Secretary of A.P. TRANSCO LTD, on 22.09.1992, appointed the Superintending Engineer as the Enquiry Officer to hold an enquiry against the second respondent. The Enquiry Officer framed the following charge:

"Sri D.Venkataiah, S/o.Mallaiah of Dosapad village Penpahad Mandal, reported to have manipulated to change the name of Sri K.Venkataiah, S/o. Anthaiah, Casual Labour in East Nalgonda Construction Section as D.Venkataiah, S/o.Mallaiah and managed the situation in getting selected as Helper in APSEB. Sri Venkataiah, S/o.Mallaiah had managed the name of K.Venkataiah as D.Venkataiah, S/o.Mallaiah and cheated the APSEB which constitutes misconduct as per APSEB (Revised) Conduct Regulations."

The enquiry officer submitted his report on 31.03.1994, wherein he held that, on verification of facts, it was clear that a person by name D.Venkataiah had attended the interview before the Selection Committee in his original name as Dongari Venkataiah S/o. Mallaiah and had obtained appointment, that there was always scope for change in signature over a long period of time, that he had also produced real certificates, that there was no *mala fide* intention, that it was not a case of impersonation and that a police complaint was also not lodged against the second respondent. The enquiry officer held that the charges levelled against the second respondent was not proved.

Invoking the powers under Regulation 10(2)(A) of the A.P.S.E.B. Employees Revised Conduct Regulations and Disciplinary & Appeal Regulations, the Member Secretary ordered for

a *de novo* enquiry. The enquiry was conducted afresh and the enquiry officer, on taking note of the fact that the second respondent did not produce any evidence and had failed to prove that he had worked in Operation Section, Suryapet during 1979, held that there was no reason to believe that he had worked as casual labour. Based on the second enquiry report, a show cause notice was issued to the 2nd respondent on 10.12.1996, to which the 2nd respondent submitted his explanation on 10.11.1997. The disciplinary authority, by order dated 11.01.1999, imposed the punishment of dismissal from service on the second respondent.

The second respondent filed an application, under Section

2-A(2) of the Industrial Disputes Act, 1947, before the Tribunal in I.D.No.114 of 2000. The Tribunal, by order dated 17.01.2001, held that regulation 10(2)(A) would apply only when there was no enquiry and that in any event, in the *de novo* enquiry, the enquiry officer in violation of principles of natural justice, had thrown the burden on the workman to prove, and that no opportunity was given to the employee to show cause against the report of the enquiry officer. The Tribunal, by order dated 17.01.2001, held that the domestic enquiry was invalid. Pursuant thereto, both the second respondent-workman and the employer adduced evidence. While the second respondent examined himself as W.W.1, one Ch.Veerabhadra Rao was examined as M.W.1 on behalf of the petitioners herein. While Exs.W.1 to W.8 were marked on behalf of the second respondent, Exs.M.1 to M.2(A) were marked on behalf of the petitioners. The Tribunal, by award in I.D.No.114 of 2001, dated 09.04.2001, directed the petitioners herein to reinstate the second respondent-workman with continuity of service but without backwages and attendant benefits. Aggrieved thereby, the erstwhile A.P.S.E.B. is now before this Court.

Sri Samineni Kishore, learned standing counsel appearing on behalf of the petitioners, would submit that the second respondent had secured employment by impersonation and as such was disentitled from seeking employment with the A.P.S.E.B. Learned standing counsel would contend that the second respondent had failed to discharge the burden of establishing that he had worked as casual labour during the relevant period before his being appointed in the services of the erstwhile A.P.S.E.B. Learned Standing Counsel would submit that despite the regulations being silent, with regards conducting *de novo* enquiry, the employer had the inherent power to hold a *de novo* enquiry where the earlier enquiry was found to be defective.

Smt S.V.Indira, learned counsel for the second respondent, on the other hand, would seek to sustain the award of the Tribunal. She would contend that since the Labour Court had, on appreciation of the evidence on record, come to the conclusion that there was no impersonation by the second respondent, it was not open to the petitioners herein to invoke the certiorari jurisdiction of this Court, under Article 226 of the Constitution of India, and seek reappreciation of the evidence on record. Learned counsel would rely on **B.Balakishan Reddy V. Andhra Pradesh State Electricity Board**; **Primary Agricultural Coop. Society V. B. Malla Reddy**; **S.Radhakrishna Murthy V. A.P.S.E.B**., in support of her submission that regulation

10(2)(A) did not empower the disciplinary authority to conduct a *de novo* enquiry and inasmuch as in the earlier enquiry, the disciplinary authority had held that the charges levelled against the second respondent had not been proved, eschewing the enquiry report, submitted in the *de novo* enquiry, would automatically result in the second respondent being reinstated into service.

In **S.Radhakrishna Murthy** (3 supra), this Court following the judgment of the Supreme Court in **K.R. Dev V. The Collector of Central Excise**, held thus:

"To sum up, Regulation 10(2)(a) of Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations does not normally provide for *de novo* enquiry. But where there is a fatal procedural defect committed in the first enquiry causing prejudice to the official, the Disciplinary Authority can order fresh enquiry even without waiting for the delinquent official to raise that objection. Whether such a course is open to the Disciplinary Authority in case where the charged official is exonerated in the first enquiry is left open. But where an official is exonerated in the first enquiry not vitiated by serious fatal defect, the Disciplinary Authority cannot order de novo enquiry merely on the ground that certain witness was not examined or certain documents was not considered, etc. It is always open to the Disciplinary authority to come to a different conclusion on the evidence recorded by the Enquiring Authority. What the Disciplinary Authority can do under Regulation 10(2)(a), the higher authority can also do acting under Regulation 7(c) (d) and (e). As the defect pointed out by the Superintending Engineer in the instant in not a fatal one, the *de novo* enquiry ordered is without jurisdiction."

In **B.Balakishan Reddy** (1 supra), regulation 10(2) of the A.P.S.E.B. Employees Revised Conduct Regulations and Disciplinary and Appeal Regulations were considered by this Court and it was held thus:

"It is thus clear that the Disciplinary Authority has enough powers if it disagrees with the report of the Enquiry Officer, to reconsider the evidence itself and come to its own conclusions. In the instant case also the disciplinary authority had sufficient power to reconsider the evidence if it thought that the consideration was not proper. The Regulations do not contemplate that if the disciplinary authority wants that enquiry should be concluded in a particular manner then it can change the Enquiry Officers, without assigning any reason for achieving the end of obtaining a report from the Enquiry Officer in a particular manner. The Supreme Court in the aforementioned case had occasion to deal with such contingency also and pointed out that a suspicion arose that the disciplinary authority was determined to get adverse report against the appellant. Same is the position in the instant case."

"The learned Standing Counsel for the respondent-Board contended that it was permissible in a departmental proceeding to appoint fresh Enquiry Officer to hold a de novo enquiry when the enquiry suffers from certain defects. For this purpose, he drew my attention to the

decision of this Court in P.Mohand Rao V. Dy. I.G. of Police, Hyderabad (1975 (1) APLJ 114). No doubt, this Court in the said case observed that in certain circumstances, it will be open for the disciplinary authority to appoint a fresh Enquiry Officer and direct a de novo enquiry. However, the circumstances under which such step can be taken have also been illustrated. As far as that case is concerned, there was basic infirmity committed in the first enquiry. What had happened was the charges which were issued to the delinquent were issued by a person who had no authority to impose the penalty. The Rules themselves prescribed that charges should be issued by a person who was competent to impose penalty, and not by the Enquiry Officer. The charge was, however, issued by the Enquiry Officer, and not by the competent disciplinary authority. Thus, there was basic infirmity in the initiation of the enquiry itself. It was in that background that this Court held that the enquiry at the hands of the first Enquiry Officer was vitiated, and it was perfectly legal for the disciplinary authority to direct a de novo enquiry against the petitioner by issuing afresh charge by the competent authority i.e., the Disciplinary Authority. In the instant case, it is not the contention of the respondent-Board that there was any basic infirmity, which had crept in completing the enquiry by the first Enquiry Officer. In view of this true legal position, it is clear that appointment of second Enquiry Officer in the instant case was unjustified, and it was apparently meant to harass the petitioner by holding successive enquiries against him."

This Court relied on **State of Assam V. J.N. Roy Biswas**, wherein the Supreme Court held that once a disciplinary case was closed, the Government could not restart the exercise in the absence of a specific power, to review or revise, being vested by the Rules in the disciplinary authority, which also inhibited a second enquiry by the disciplinary authority after the delinquent had once been enquired into.

The Division Bench of this Court in **B. Malla Reddy** (2 supra) held thus:

"After a thorough examination of the case, we are in respectful agreement with the learned Single Judge. It is a well known proposition that a second enquiry or successive enquires are hit by the theory of double jeopardy to which a person cannot be subjected to. Apart from the reasons advanced by the learned Single Judge, the further fact that remains is that the report of the enquiry officer is only recommendatory in nature and the authority to initiate enquiry has himself the power to either accept the enquiry report or reject it either fully or in some respects and in the event he disagrees with any part of the enquiry report, he can call upon the person proceeded to explain his conduct and in the course of such proceedings may also call upon him to explain any evidence, documentary or oral, appearing against him. The authority is not bound to accept the views expressed by the Enquiry Officer and can also take a different view on the same set of materials, It was hence not necessary for the District Cooperative Officer to direct a second enquiry if he was dissatisfied with the first enquiry report but could have proceeded in respect of matters which he felt were left

untouched by the Enquiry Officer on his own, and called upon the respondent to explain such facts. In that view of the matter, the second proceeding was misconceived and has been rightly quashed. We, however, make it clear that the District Cooperative Officer can take action as is available to him as explained above."

It is thus clear that unless a specific power is conferred by the statutory regulations to conduct a *de novo* enquiry, once the earlier enquiry has been closed, the authorities are not entitled in law to conduct a *de novo* enquiry. Though it is stated in the affidavit filed in support of the writ petition that the Supreme Court had held that even in case where after the domestic enquiry is conducted, the authority is nonetheless, empowered to order a *de novo* enquiry, no such judgment of the Supreme Court has been brought to the notice of this Court.

The authoritative pronouncements of this Court, in the aforesaid judgments, clearly establish that in the absence of a specific power being conferred under the rules for conducting a
de novo enquiry on completion of the earlier disciplinary proceedings, a *de novo* enquiry is impermissible. Even otherwise, as held in **B.Balakishan Reddy** (1 supra), it is only if serious infirmities in the earlier enquiry is pointed out would there be any justification for conducting a *de novo* enquiry. No such infirmities has been pointed out justifying conducting of a *de novo* enquiry in this regard. I, therefore, see no reason to hold that the earlier order of the Tribunal dated 17.01.2001, in holding that the domestic enquiry is vitiated, calls for any interference.

Once the preliminary order of the Tribunal dated 17.01.2001 is upheld, the only question which remains to be considered is the validity of the exercise of jurisdiction by the Tribunal under Section 11-A of the Act. It is well settled that, under Section 11-A of the Act, the Tribunal has the power to reappreciate the evidence on record. In cases where the Tribunal decides, as a preliminary issue, that the domestic enquiry is vitiated, the evidence adduced by both the parties, (both oral and documentary), before the Tribunal constitutes the evidence on record, which is required to be appreciated by the Tribunal in deciding as to whether the charges alleged against the workman are established or not. In this context, the findings of the Tribunal read thus:

"The respondent-management has issued a paper notification under Ex.w-1 and also issued a memo to the workman under Ex.W-2 requesting him to attend the Office

Superintendent (Operation Circle), Khammam on 07.06.1989 at 6 A.M. for oral test along with the original certificates. Accordingly he has attended the interview and got selection and appointment proceedings were issued to him under Ex.W-4 in the name of D.Venkataiah only but not K.Venkataiah. Thereafter, he was appointed as Helper under Ex.W-3 in which the name of the workman mentioned as D.Venkataiah S/o. Mallaiah under Ex.W-5 and he was directed to attend the duty as Helper in which document was also the name of the workman was mentioned as D.Venkataiah, as per Ex.W-6, the workman seniority is fixed as Helper in the list of Helpers of Operation Division, Suryapet in which the name of the workman is also mentioned as D.Venkataiah, Helper. Subsequently the workman was promoted as Assistant Lineman, in which against S.No.17 the name of the workman mentioned as D.Venkataiah. But in the same document his name is written with ball pen "To Sri D.Venkaiah". In this context, the cross examination of M.W.1 is relevant, who categorically deposed that the name of the workman shown at S.No.17 under Ex.W-7 as D.Venkataiah which is also true that due to typographical mistake or error, the said proceedings under Ex.W-7 were served to the workman showing his name as D.Venkaiah. Therefore, it is clearly established that the workman has not committed any impersonation as contended by the learned counsel for the workman. M.W.1 further deposed that it is also true that the present D.Venkataiah as per Ex.W-1 notification and the person under Ex.M-2(A) has worked for 106 days and that the person shown at S.No. 245 in Ex.M-2(A) and the workman are one and the same. He further deposed that they are not having any document to show that the workman has only been appointed by impersonating the name K.Venkataiah. It is true that during the domestic enquiry the enquiry officer has given finding that the charge levelled against the workman is not proved. He also further deposed that it is true in pursuance of Ex.W-2 the selection committee has selected the workman by verifying the records as mentioned in the Ex.W-2. It is also true that Ex.W-3 appointment letter was issued to him after selecting him through the selection committee. Thereafter the workman went under training for TTC at Vijayawada under Ex.W-5. Ex.W-5 is the certificate showing that the workman has undergone training at Vijayawada. The oral evidence coupled with the documentary evidence, it is not established that the workman got appointed under impersonation. Therefore, the action of the respondent in removing the workman from service is not justified one."

It is therefore clear that the Tribunal, on appreciation of the evidence on record, has come to the conclusion that there was no impersonation by the second respondent. The Tribunal held that, from the oral evidence coupled with the documentary evidence, it was not established that the workman was appointed under impersonation and, therefore, the action of the petitioners in removing the second respondent was not justified.

The scope of Certiorari jurisdiction, under Article 226 of the Constitution of India, is limited. The jurisdiction of this Court is supervisory and not appellate and it is not for this Court, normally, to reappreciate the evidence on record or to sit in

appeal over the findings of the Tribunal, as long as the Tribunal has considered the evidence on record and has arrived at its findings on the basis of such evidence. Even if it was possible to arrive at a different conclusion, on the evidence on record, this Court, under Article 226 of the Constitution of India, would not interfere with the findings of the Tribunal. It is only where it is established that the findings of the Tribunal are perverse or are based on no evidence would any interference be called for. It is not even the case of the respondents that the findings of the Tribunal are perverse or that it is based on no evidence. The award of the Tribunal therefore does not call for any interference.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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28.01.2006

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